

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Uniform Rules Subcommittee
Mr. Curtis E. A. Karnow, Chair
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DATE: October 2, 2003

SUBJECT: Receivership Rules (adopt Cal. Rules of Court, rule 1902.5 and amend rule
1908) (Action Required)

Issue Statement

The receivership rules in the California Rules of Court would be improved by (1) the adoption of a new rule on undertakings, and (2) the amendment of the rule on final accounts.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2004:

1. Adopt rule 1902.5 of the California Rules of Court to provide that an applicant for the appointment of a receiver must propose, and state the reasons for, the specific amount of the undertaking required by statute; and
2. Amend rule 1908 of the California Rules of Court to add that when the receiver files a motion or a stipulation for final account and report, the motion or stipulation must include a request for discharge and a request for exoneration of the receiver's surety.

The text of the new and amended rules is attached at pages 5 and 6.

Rationale for Recommendation

The receivership rules of the California Rules of Court were relocated and expanded, effective January 1, 2002. The Rules Committee of the Superior Court of Los Angeles County has proposed that certain additional changes be made to improve and clarify these rules. The proposals relate to the amount of undertakings and final accounts.

Rule 1902.5. Amount of undertakings

A new rule concerning undertakings would be adopted. This rule would provide that the application for the appointment of a receiver must propose, and state the reasons for, the specific amount of the undertakings required under Code of Civil Procedure sections 529, 566(b), and 567(b) for any injunction ordered with the appointment. Any other party may propose, and state the reasons for, the amount that that party regards as appropriate.

It would be helpful to have a specific rule on undertakings in the receivership rules. Because orders appointing a receiver are usually accompanied by a preliminary injunction requiring the parties to turn over property to the receiver and to cooperate with the receiver, an undertaking is required by Code of Civil Procedure section 529 to support the preliminary injunction. The purpose of such an undertaking is to protect the party who opposes the receivership from loss if the applicant fails to prevail on the merits of the underlying action for which the receivership and injunction are provisional remedies. The amount of the undertaking is usually set by estimating the value of lost opportunities that will be suffered by the opposing party because of loss of control over the property, plus the amount of attorney's fees that will have to be expended to vacate the preliminary injunction.

When the receiver is appointed ex parte, an additional undertaking is required by Code of Civil Procedure section 566(a), to protect the opposing party from damage that will be suffered during the brief period that the receivership is in effect, if the ex parte appointment is not confirmed. The amount of the undertaking is usually determined in a manner similar to the undertaking required by Code of Civil Procedure section 529.

Finally, the receiver's undertaking required by Code of Civil Procedure section 567 is in the nature of a fidelity bond to protect the parties from misappropriation by the receiver of property entrusted to him or her. The amount is usually set by estimating the value of cash, or assets easily convertible to cash, that the receiver will have in his or her possession at any one time.

The new rule would require the applicant to explain the basis for the specific amount of the undertaking proposed and give others an opportunity to agree with the applicant or to explain that some alternative amount is more appropriate.

Rule 1908. Receiver's final account and report

Rule 1908, which requires the receiver to file a final report and account for approval by noticed motion, would be amended. First, the rule would be modified to add that when a party presents a final account and report, it must also submit a request for discharge of the receiver from his duties and a request for exoneration of the receiver's undertaking to the orders. The rule has also been modified to authorize presentation of the final account by stipulation as well as noticed motion.

Second, a new subdivision (b) would be added to rule 1908 stating that no memorandum needs to be submitted in support of a motion or stipulation filed under this rule unless the court so orders.

Third, a new provision would be added to rule 1908 regarding what notice the receiver must give of the motion or stipulation to approve the final account and report. Notice must be given to every person or entity known to the receiver to have a substantial, unsatisfied claim that will be affected by the order or stipulation, whether or not the person or entity is a party to the action or has appeared in it.

Finally, rule 1908 has been reorganized to contain four subdivisions. Subdivision (a) contains the proposed new provisions that add requests for discharge and requests for exoneration to the matters that must be included in the final account and report. Subdivision (b) contains a new provision that no memorandum is required in support of the motion or stipulation. Subdivision (c) contains the proposed new notice requirements. Subdivision (d) contains the existing requirements relating to the information that must be provided if the final accounting claims any allowance of compensation for the receiver or an attorney employed by the receiver.

Alternative Actions Considered

The current receivership rules could be left unchanged. But because the proposed new and amended rules would clarify and improve practice in the area of receiverships, the Civil and Small Claims Advisory Committee recommends that they be adopted.

Comments From Interested Parties

Two public comments were received on this proposal.¹ The commentators were the president of a local bar association and a court executive officer. Both commentators supported the rules proposals, and one suggested a minor stylistic change, which has been made. Also, a member of the Judicial Council's Rules and Projects Committee, who has expertise in the area of receivership law, recommended deleting an item that had been

¹ A chart summarizing the comments is attached at page 7.

listed in proposed amended rule 1908(a), i.e., a request for instructions. Such requests may be made at various times during the proceeding.

Implementation Requirements and Costs

While the rules may require some changes in practice for courts and practitioners, the result of instituting these new practices should be beneficial and cost-effective. The proposed new and amended rules embody what are currently considered to be good practices in the area of receiverships. The adoption of these rule changes will require that all practitioners in the area of receiverships follow these practices. No direct costs are expected to result from the proposals.

Attachment

Rule 1902.5 of the California Rules of Court is adopted and rule 1908 is amended, effective January 1, 2004, to read:

Rule 1902.5. Amount of undertakings

At the hearing of an application for appointment of a receiver on notice or ex parte, the applicant must, and other parties may, propose and state the reasons for the specific amounts of the undertakings required from

(1) the applicant by Code of Civil Procedure section 529,

(2) the applicant by Code of Civil Procedure section 566(b), and

(3) the receiver by Code of Civil Procedure section 567(b)

for any injunction that is ordered in or with the order appointing a receiver.

Rule 1908. Receiver's final account and report

(a) **[Motion or stipulation]** A receiver must present by noticed motion or stipulation of all parties:

(1) A final account and report ~~by noticed motion;~~

(2) A request for the discharge; and

(3) A request for exoneration of the receiver's surety.

(b) **[No memorandum required]** No memorandum needs to be submitted in support of the motion or stipulation served and filed under (a) unless the court so orders.

(c) **[Notice]** Notice of the motion or of the stipulation must be given to every person or entity known to the receiver to have a substantial, unsatisfied claim that will be affected by the order or stipulation, whether or not the person or entity is a party to the action or has appeared in it.

(d) **[Claim for compensation for receiver or attorney]** If any allowance of compensation for the receiver or for an attorney employed by the receiver is claimed in the ~~an~~ account, it must state in detail what services have been performed by the receiver or the attorney, and whether previous allowances have been made to the receiver or attorney and the amounts.

SPR03-13
Receivership Rules
(adopt Cal. Rules of Court, rule 1902.5 and amend rule 1908)

	Commentator	Position	Comment on behalf of group?	Comment	Subcommittee Response
1.	Mr. Robert Gerard President Orange County Bar Association	A	Y	The proposed rules reflect current practice.	The committee agreed with this comment generally. The effect of the proposed rules will be the prominent good practice in this area consistently throughout the state.
2.	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego	AM	N	Page 4–Delete words "of points and authorities" so the language is consistent.	The committee agreed with this comment.